

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 704 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.SHAH

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? Yes

2. To be referred to the Reporter or not? Yes

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3. Whether Their Lordships wish to see the fair copy
of the judgement? No

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil
Judge? No

RUKHIBEN W/O AMARSINGH CHATURBHAI PARMAR

Versus

KIRITKUMAR KANTILAL PATEL

Appearance:

MR MC SHAH for HM PARIKH for Petitioners

MR RR VAKIL for Respondent No. 1

CORAM : MR.JUSTICE S.D.SHAH

Date of decision: 03/09/97

ORAL JUDGEMENT

1. Petitioners are the original defendants and the
respondent before this court is the original plaintiff.
It appears that the original plaintiff instituted Regular
Civil Suit No. 41 of 1992 in the Court of Civil Judge,

Junior Division, Dakor - Thasara for injunction to restrain the present petitioners from disturbing their possession of the land bearing Survey No. 232 admeasuring 3 Acres and 34 Gunthas situated at village Ojarara, Taluka Thasara. In the suit filed by the plaintiff they alleged that by registered sale deed, they have purchased the land in question from the present petitioners and that as per the sale deed also peaceful and vacant possession of the suit land is handed over to the purchaser. The present petitioners appeared in the suit and by filing written statement contended that the land was in their possession and that a kachcha hut of their ownership is situated on the land. They also contended that the sale deed has been obtained by fraud but no specific details of fraud were pleaded and how the fraud was committed or by whom the fraud was committed was not at all stated in the written statement. The trial court granted injunction in favour of the plaintiff since there was a registered sale deed in their favour executed by the petitioners defendants wherein a specific averment is made that the possession of the suit land is handed over to the purchaser. If one looks at the registered sale deed, which is executed before the Sub-Registrar, Thasara, the same is executed on 4th of September, 1987 and is executed in favour of Kiritkumar Kantilal Patel who is shown to be the purchaser and is the present respondent plaintiff. The sale deed is executed by the present petitioners defendants and in the sale deed itself it is specifically stated that the sale price of the land was fixed at Rs. 19,000/- which was received by the vendor of the land and that the vendor thereafter has no right, title or interest over the said plot of land and he has handed over the full, vacant and peaceful possession of land in question to the vendee i.e. the purchaser. It is also stated that from the date of the sale deed, the purchaser has become the full, absolute owner of the land in question and he has been put into possession thereof and he was at liberty to deal with the said land in the manner he would like. The execution of such registered sale deed is not disputed before this court by either of the parties and one of the parties being Rukhiben has put her thumb mark while other parties have signed the documents. It appears that after the possession was handed over, the purchaser of the land tried to encroach upon the land by putting up of a small hut in the corner of the land and, therefore, the respondent - plaintiff has applied to the court by application at Exhibit 74 to remove the said hut from the land in question as the land was sold to the respondent plaintiff by registered sale deed and that peaceful and vacant possession of the land in question was given to

the respondent - plaintiff. After such application was given at Exhibit 74, it appears that the court called upon the present petitioners defendants to file their reply and after taking such reply into consideration, passed the impugned order dated 18th December 1993, calling upon the defendants to remove the hut in question at their costs and that if the defendants is not complied with the order of the court, appropriate order will be passed against the defendants. The court further stated that it was passing such order under Section 151 of the Code of Civil Procedure.

2. Now, it may be stated the respondent - plaintiff has no where in his application at Exhibit 74 for removal of the hut stated that he was moving the court under Section 151 of the Code of Civil Procedure. He has on the contrary stated that since he was apprehending that the petitioners - defendants who were vendors might take law in their hands and might encroach upon the land in question, interim injunction should be granted in his favour. It appears that after the injunction was granted by the trial court in favour of the respondent plaintiff based on the averment made in the registered sale deed, and after the suit was filed, an application was given by the petitioners - defendants for appointment of Court Commissioner to make on the spot investigation and to find out as to whether who was really in possession of the land in question. In fact, after the injunction was granted in favour of the respondent plaintiff, since the petitioners - defendants committed breach of injunction, he has moved the court by Application at Exhibit 19 for taking appropriate action for breach of injunction. In such situation, the trial court passed the order dated 18th December, 1993 requiring the petitioners - defendants to remove the hut in question from the land which is already sold by them to the respondent plaintiff by registered sale deed.

3. Mr. M.C. Shah, learned counsel appearing for the petitioners - defendants has assailed the order of the trial court on a very technical ground that the trial court could not have passed the order under Section 151 of the Code of Civil Procedure because inherent powers cannot be used by the civil court when specific provision is made for breach of order of injunction under Order 39 Rule 2 of the Code of Civil Procedure. Firstly, it must be noted that the respondent - plaintiff has not moved under Section 151 of the Code of Civil Procedure, but the trial court itself has stated that it was exercising power under Section 151 of the Code of Civil Procedure. In fact, the trial court was granting the mandatory

direction as the same was required to be granted because the petitioners - defendants had already put the respondent - plaintiff into possession of the land by executing registered sale deed and by fully recovering the sale price. The persons who are simply the trespassers on the land and the person who have already executed a registered sale deed in favour of the respondent - plaintiff wherein specific averment is contained that the respondent plaintiff is put into possession of the land in question and that they have no right, title or interest over the land in question thereafter cannot be permitted to state that they were in possession of the hut when the court commissioner made the panchnama. In fact, they had no tittle of title over the land in question to entitle them to a relief of injunction. The Apex Court has in the case of PREMJI RATANSEY SHAH v. UNION OF INDIA, reported in (1994) 5 SCC 547 clearly taken the view that grant of injunction is a discretionary and equitable relief. Ordinarily, no injunction can be issued in favour of a trespasser or a person who gained unlawful possession as against the true owner. The person must show his personal interest in the property and when the court found that in the case before it the person has no title whatsoever over the land as against the true owner, the court held that no injunction could be granted. In para-5 of the reported judgment, the court made following pertinent observations which in clear terms laid down law on the subject.

"It is equally settled law that injunction would not issued against the true owner. Therefore, the courts below have rightly rejected the relief of declaration and injunction in favour of the petitioners who have no interest in the property. Even assuming that they had any possession, their possession is wholly unlawful possession of a trespasser and an injunction cannot be issued in favour of trespasser or a person who gained unlawful possession, as against the owner. Pretext of dispute of identity of the land should not be an excuse to claim injunction against the owner."

It is thus clear that the persons whose possession is wholly unlawful possession are simply trespasser on the land and injunction cannot be issued in their favour or in favour of a person who has unlawfully gained possession as against the lawful owner.

4. Mr. M.C. Shah, learned counsel appearing for the petitioners - defendants, however, placed reliance

upon the decision of His Lordship Justice M.P. Thakker (as His Lordship then was) in the case of RAMSHREE MAHAVIR v. GIRDHARILAL BHOLANATH AGARWAL reported in 11 GLR 1971. In my opinion, the said decision does not lay down the correct law on the subject and is impliedly overruled by the aforesaid subsequent decision of the Apex Court. The view which is taken by the Apex Court in the subsequent decision was even taken earlier by His Lordship Justice D.A. Desai of this Court by holding that a person who has no tittle of title over the land, is not entitled to an order of injunction against the lawful original owner of the property.

5. In my opinion, even otherwise also, the order passed by the trial court is just and proper and not assailable and the same is required to be confirmed. The present Civil Revision Application filed by the petitioners - defendants is, therefore, required to be dismissed and the same is dismissed. Rule is discharged. The order of status quo granted earlier is hereby vacated. There shall be no order as to costs.

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